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June 14, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 94-54

Dear Mr. Caton:

Transmitted herewith for filing with the Commission, on behalf of Bell Atlantic Mobile Systems, Inc., are an original and five copies of its "Comments" on the Commission's Second Further Notice of Proposed Rulemaking in this proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

COMMENTS OF BELL ATLANTIC MOBILE SYSTEMS, INC.

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Dated: June 14, 1995

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COMMENTS OF BELL ATLANTIC MOBILE SYSTEMS, INC.

Bell Atlantic Mobile Systems, Inc. (Bell Atlantic Mobile),[1/] by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments on the Second Notice of Proposed Rulemaking (Second NPRM)[2/] in this proceeding.

I. SUMMARY

Interconnection and Roaming. The Second NPRM follows the right course in declining to propose new regulations for interconnection and roaming that would apply to providers of commercial mobile radio services (CMRS). The Commission has in

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1/ Bell Atlantic Mobile, either directly or through subsidiaries, partnerships or affiliates, operates cellular telephone systems in more than 50 markets in the Mid-Atlantic, Northeast, Southeast and Southwest regions of the United States.

2/ CC Docket No. 94-54, FCC 95-149 (released April 20, 1995). The Second NPRM addresses interconnection and other issues raised by an earlier Notice of Inquiry (Interconnection NOI) in this proceeding. CC Docket No. 94-54, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd. 5408 (1994).

other proceedings adopted a firm policy not to impose new CMRS rules absent a clear need. No such need exists here.

Interconnection and roaming rules would also lack a rational basis given present and rapidly increasing competition among CMRS providers. Interconnection and roaming arrangements among CMRS carriers are continuing to develop, and roaming prices are declining, as a result of competitive market forces. Moreover, the wireless industry, through numerous industry-wide efforts, has developed interconnection and roaming standards, and new efforts, including work on standards for PCS and SMR services, are underway. Given the rapidly evolving technical issues and innovation that characterize the industry today, the Commission is correct in not attempting to set specific rules itself. Such rules may well retard the development of alternative interconnection or roaming arrangements, discourage innovation, and impair growth of the industry.

Preemption. For the same reasons, the Commission should not allow states to impose a patchwork of CMRS interconnection or roaming obligations, but should preempt state intervention now.

Resale. Bell Atlantic Mobile supports the Commission's proposal to extend to all CMRS providers its rule prohibiting cellular carriers from restricting resale. Since the pro-competitive rationale for this rule applies equally to all CMRS providers, there is no logical basis for subjecting only cellular carriers to resale obligations. The current disparity, in which only one type of CMRS provider but not its competitors has resale obligations, must also be eliminated because it violates the

precept of regulatory symmetry which Congress directed should guide the Commission's regulation of CMRS.

The Commission should also confirm its tentative decision not to require switch-based resale. There is no justification for such extensive intrusion into this competitive market.

II. THE COMMISSION SHOULD NOT ADOPT INTERCONNECTION STANDARDS AND SHOULD PREEMPT STATE STANDARDS.

The Commission tentatively concludes that CMRS-to-CMRS interconnection rules should not be adopted. Second NPRM at ¶¶ 29-31. Bell Atlantic Mobile agrees. Imposing specific interconnection standards would be improper for two reasons: (1) They would contradict Congress' instruction to the Commission to limit its regulation of the CMRS industry. (2) Government-specified interconnection standards are neither needed, nor are they feasible. These reasons also warrant preemption of state efforts to impose CMRS interconnection standards.

CMRS Regulatory Policy Compels Allowing the Market to Develop Interconnection. The Commission's view that specific interconnection requirements should not be adopted is consistent with its fundamental approach to regulating the CMRS industry. That approach focuses on promoting competition through reducing regulatory barriers and promoting multiple entrants into the market, rather than on regulatory interference. The Commission recently explained the legal and economic basis for that approach in the Orders denying the petitions of seven states to continue rate regulation of cellular carriers. It relied on the language and legislative history of the Omnibus Budget Reconciliation Act

of 1993 (OBRA), which it found directs that market imperfections should be alleviated through encouraging entry of new competitors, not through "heavy-handed regulation."[3/]

> OBRA reflects a general preference in favor of reliance on market forces rather than regulation. Section 332(c), for example, empowers the Commission to reduce CMRS regulation, and it places on us the burden of demonstrating that continued regulation will promote competitive market conditions. . . . Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states could demonstrate a clear-cut need. (Id. at ¶¶ 8, 10.)

This statement of regulatory policy provides the blueprint for resolving this rulemaking. It supports the Commission's tentative conclusions as to interconnection, because the record shows there is no need, let alone a "clear-cut" one, for imposing interconnection standards.

Interconnection Rules Are Neither Needed Nor Feasible. Far from complaining that they are being deprived of interconnection, carriers commenting on the Interconnection NOI urged the Commission to allow them to establish interconnection arrangements themselves. The record shows that carriers are interconnecting where they have the economic incentive to do so and that market forces are leading to interconnection. There is in short no justification for interconnection standards that would meet the

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3/ Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order, PR Docket No. 94-106 (released May 19, 1995), at ¶ 13. Each of the seven Orders contains a nearly identical discussion of the Commission's regulatory approach to CMRS.

Commission's own test for adopting new regulation: a specific, demonstrated need for government intervention.

The fact that the Commission has had interconnection rules for the landline industry does not warrant CMRS interconnection rules. The Commission also recognized in the state preemption Orders that policies developed in the landline market do not automatically transfer to the CMRS market, because of the vastly different competitive conditions each market presents.[4/] Whatever the reasons may be for imposing interconnection standards on dominant landline carriers, those reasons do not apply to the multi-competitor wireless market. Each regulation must be justified as necessary to safeguard CMRS competition, or to remove some barrier to competition. CMRS interconnection regulations would not meet those tests.

In addition, as the Commission acknowledges, the CMRS industry is changing too fast to adopt appropriate standards for interconnection among carriers today. Second NPRM at ¶ 26. Interconnection is rapidly evolving in response to new entrants, new wireless networks, and new service offerings to customers. Interconnection arrangements are thus a "moving target" that regulation cannot pin down without being instantly outdated. The industry is itself working on numerous standards, for example for PCS and SMR networks and interfaces. Industry-developed standards can quickly be revised to respond to innovation and technological advances, but government standards as a practical matter cannot. The comments on the Interconnection NOI reveal how difficult it

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4/ Report and Order, PR Docket No. 94-106, supra n.3, at ¶ 13.

would be for the Commission to adopt a specific set of standards. Worse, imposing such standards would discourage innovation, blocking or at least retarding the evolution of new, more efficient interconnection arrangements.

As the Second NPRM recognizes, a decision not to impose interconnection rules in this proceeding in no way forecloses a future rulemaking, nor does it preclude the Commission from taking enforcement action where appropriate. Were market conditions to develop that impede competition in ways that warrant intervention, the Commission could then step in. But the record shows that no such conditions now exist. Similarly, the Commission's complaint process is available to parties who believe that a CMRS provider has violated its statutory duty to respond to a reasonable request to interconnect. 47 U.S.C. §§ 201, 208. The Commission should thus confirm its tentative conclusion and not adopt specific interconnection rules for CMRS.[5/]

State Interconnection Requirements Should Be Preempted. The Commission should also preempt state-imposed interconnection

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5/ The Commission suggests that LEC-affiliated CMRS carriers may have a "unique incentive" to deny an interconnection request. Second NPRM at ¶ 43. This speculation is neither supported by the record nor by logic. There is no evidence that LEC affiliates are denying interconnection requests. Moreover, those affiliates, like all CMRS carriers, will seek the least-cost routing for their traffic. Where CMRS-to-CMRS interconnection is the least costly, these carriers will have adequate incentive to use it, for otherwise they can be underpriced by their competitors. There is no more basis for the Commission's apparent presumption against LEC affiliates than there would be for one against IXC-affiliated CMRS providers. The Commission should explicitly renounce this approach, and evaluate the interconnection actions of any CMRS carrier on the merits, as the Communications Act requires.

obligations as part of its action in this proceeding. Second NPRM at ¶ 44. State regulation of CMRS interconnection rates has already been preempted by Congress. 47 U.S.C. § 332(c)(3)(A). There is no reason why interconnection requirements should not be preempted as well, for they can only undermine and frustrate the Commission's overarching policy of relying on market forces, not rules, to promote competition.

The benefits that the Commission identifies (Second NPRM at ¶¶ 28-31) as flowing from an open CMRS marketplace would be impeded by state requirements. Moreover, political considerations which can lead to state intervention by definition do not reflect the national goal, articulated by Congress, of developing seamless national wireless service.[6/] Were CMRS providers forced to comply with a patchwork of inevitably different state requirements, their incentive and ability to adopt cohesive regional and national interconnection arrangements would be impaired. Based on Bell Atlantic Mobile's experience with interconnection, it expects that designing and implementing different state-specific arrangements may impose significant costs. State intrusion would also impair and frustrate industry-wide standard-setting.

Preemption of state-imposed CMRS interconnection standards is thus essential to achieve the goals the Commission has set.

6/ In enacting OBRA, Congress preempted state rate and entry regulation "[t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure." H. Conf. Rep. No. 103-211, 103d Cong., 1st Sess. (1993) at 587.

III. ROAMING STANDARDS SHOULD NOT BE ADOPTED.

The Commission finds that the present record also does not support adopting rules governing roaming service. Second NPRM at ¶ 56. This finding is correct. There is no more justification for imposing roaming standards than there is in setting specific interconnection requirements. Attempting to do so would be seeking a solution for a problem which does not exist.

The record shows no evidence of refusals to enter roaming agreements. To the contrary, carriers demonstrate that it is in their economic interest to enter into roaming agreements. They have in fact developed both national and international roaming arrangements and standard roaming agreements to provide seamless wireless service to the public. Second NPRM at ¶¶ 49-51. Roaming prices paid by cellular customers have been steadily declining. These facts indicate a functioning competitive market in no need of government intrusion.

Moreover, precisely how the Commission would craft roaming standards is problematic. The ways in which PCS, cellular, SMR and other system will interact, whether through roaming or interconnection, are rapidly evolving. Standards set today may be inapplicable to the market next year, or may even impair the development of new roaming arrangements. As with interconnection, should the market evolve in ways which suggest that there is "a clear-cut need" for regulatory intervention in roaming, the Commission can then step in.

For the same reasons that states should be preempted from setting interconnection standards, they should be preempted from imposing roaming obligations. While much roaming traffic is interstate and would thus be outside state jurisdiction in any event, there are numerous states within which different carriers provide service and thus may enter roaming agreements. Those agreements should respond to the market, not be regulated by state-prescribed requirements.

IV. THE RULE PROMOTING RESALE SHOULD BE EXTENDED TO ALL CMRS CARRIERS.

The Commission asks for comment on whether its cellular resale rule should be extended to all CMRS providers, and if so, whether that rule should also be limited to allow resale restrictions on facilities-based competitors. Second NPRM at ¶¶ 83-87. Bell Atlantic Mobile supports the imposition of the current resale obligation on all CMRS carriers.

The Commission requires cellular licensees to offer their service to resellers (except to licensed competitors which have held authorizations for at least five years) without restriction or discrimination. 47 C.F.R. § 22.901(e). It now tentatively concludes that the benefits of the cellular resale rule are no less valid for all CMRS carriers than they are for cellular carriers alone. It cites those benefits as follows: "Prohibiting resale restrictions provides a means of policing price discrimination, mitigating head-start advantages among licensees, and providing some degree of secondary market competition." Second NPRM at ¶ 83. These benefits are just as relevant to PCS, SMR or

other mobile services as they are to cellular. The resale rule should thus be an obligation applied to all CMRS providers.

"The scheme of regulatory symmetry sought by Congress"[7/] also requires that all CMRS carriers be subject to the same regulatory obligations, absent a clear justification for disparate regulation. The Commission has repeatedly stated that it perceives CMRS as a single market, where each provider may provide multiple services which overlap and thus compete with the offerings of many other CMRS providers. "Our first goal is to create a symmetrical regulatory framework for commercial mobile radio services in order to foster economic growth and expanded service to consumers through competition."[8/] Based on that policy, it has rejected requests to compartmentalize the CMRS industry through different rules based simply on the particular radio spectrum the CMRS provider is licensed to use. The Commission's approach is correct, and it compels a consistent CMRS-wide resale rule, for there is no rational basis for imposing this obligation only on cellular but not other CMRS providers.

The Commission should also limit the new rule (as it has limited the cellular resale rule) to prevent facilities-based competitors from being able to rely on resale rather than building out their systems. The Commission correctly recognizes the need to balance the benefits of new CMRS entrants' use of resale to enter the market quickly, against the public interest in having

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7/ Implementation of Section 3(n) and 332 of the Communications Act, Docket No. 93-252, Third Report and Order, 9 FCC Rcd. 7988, 8003 (1994).

8/ Id. at 8002.

them build out their networks themselves, as they committed to do. Second NPRM at ¶ 90. A two-year period is sufficient to allow facilities-based carriers to enter the market through resale. After that time, they should not enjoy a government-granted right to demand resale. Any longer time would give new licensees a disincentive to invest in their own systems, undermining the Commission's goal of developing new CMRS infrastructure.

Bell Atlantic Mobile submits, however, that as new entrants enter the industry and construct their systems, the need for the type of government intrusion into vertical market structure that the resale rule represents will disappear. The Commission based its intrusion into cellular carriers' distribution practices in part on the duopoly structure of the cellular industry, with the goal of providing more competitors.[9/] That duopoly is eroding, however, with the entry of many new CMRS providers offering substitutable mobile services.[10/] The Commission notes that the market will soon include up to six broadband PCS providers in addition to SMR and other CMRS providers: "Given the number of competitors we expect to be present in this market in the near

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9/ Cellular Communications Systems, 49 RR 2d 809, 838-39 (1981), recon. 50 RR 2d 1673 (1982), further recon., 51 RR 2d 1433 (1982). The Commission noted that the type of wholesale/ retail arrangements that a resale rule may promote "may result in the evolution of a highly competitive secondary market for distribution of cellular service, while only two carriers compete in the provision of cellular facilities."

10/ Third Report and Order, supra n.7, at 8021 (finding that cellular, PCS, SMR and other mobile services "compete or have the potential to compete with one another to serve customers' needs").

future, competitive forces should provide a significant check on inefficient or anti-competitive behavior." Second NPRM at ¶ 96. The factual and legal underpinnings for the original rule, as well as its need, are thus likely to disappear. For this reason, once the new PCS licenses are issued, the Commission should reexamine whether the resale rule continues to provide benefits that outweigh its intrusion into the CMRS market.

Switch-Based Resale. The Commission includes in its discussion of resale policies the proposal of several resellers to require facilities-based carriers to offer "switch-based resale." It decides, based on the record developed in response to the Interconnection NOI, to reject this proposal. Second NPRM at ¶ 95. The Commission's rationale is correct. When measured against the Commission's legal standard for adopting new CMRS regulation -- a clear-cut need for government intervention -- the proposal clearly fails. And it would interject the Commission into close supervision of how cellular systems and switches are configured, a radical intervention totally at odds with the Commission's deregulatory policies. Through government fiat, it would improperly provide benefits to resellers which have incurred none of the costs associated with acquiring spectrum and constructing networks. Resellers who believe they have been unlawfully denied interconnection can (and do) bring claims under the complaint process. Second NPRM at ¶ 97. Given the availability of this remedy, the absence of need for a rule, and the burdens on carriers and the Commission that the reseller proposal would impose, no additional regulation is justified.

V. CONCLUSION

For the reasons set forth in these comments, as well as in its comments in response to the Commission's Interconnection NOI in this proceeding, Bell Atlantic Mobile urges the Commission (1) not to adopt CMRS interconnection and roaming standards, (2) to preempt state regulation of interconnection and roaming, and (3) to adopt a CMRS-wide resale rule.

Respectfully submitted,

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